

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD W. HICKS
Claimant

VS.

CITY OF TOPEKA
Respondent
Self-Insured

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Docket No. 211,549

ORDER

Claimant appeals from a preliminary hearing Order of Assistant Director David A. Shufelt dated May 22, 1996 wherein the Assistant Director denied claimant's request for payment of medical expenses incurred prior to the preliminary hearing.

ISSUES

Whether the Assistant Director exceeded his jurisdiction in denying payment of previously incurred medical expenses pursuant to K.A.R. 51-3-5a which provides in pertinent part that compensation shall not be awarded for the time prior to the filing date of the application for preliminary hearing, except in highly unusual circumstances. Assistant Director Shufelt found no highly unusual circumstances existed in this situation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

Appeals Board review of preliminary hearings is limited. Either a disputed issue must be specifically enumerated in K.S.A. 44-534a or it must be alleged that the administrative law judge has exceeded his or her jurisdiction in granting or denying the benefits requested pursuant to K.S.A. 1995 Supp. 44-551.

The specifically enumerated issues in the preliminary hearing statute K.S.A. 44-534a are as follows: (1) whether the employee suffered an accidental injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice was given or claim timely made, or (4) whether certain defenses apply. Claimant asserts this matter is appealable because the Assistant Director exceeded his jurisdiction in finding no highly unusual circumstances to justify the payment of preexisting medical payments.

K.A.R. 51-3-5a states as follow:

"Except in highly unusual circumstances, the administrative law judge shall not award compensation for the period of time prior to the filing date of the application."

K.S.A. 44-534a and K.A.R. 51-3-5a grant the administrative law judge the power to make decisions regarding temporary total disability compensation and medical compensation. K.A.R. 51-3-5a goes on to restrict the administrative law judge's power to award compensation for the period of time prior to the filing date of the application to highly unusual circumstances. It is clear from the language of the administrative regulation that it is the administrative law judge's responsibility to decide the issue of highly unusual circumstances at preliminary hearing. The Appeals Board cannot find that Assistant Director Shufelt in any way exceeded his jurisdiction in denying the claimant benefits from the preliminary hearing. Thus, the Appeals Board must also find that it does not have jurisdiction to review this order under either K.S.A. 44-534a or K.S.A. 1995 Supp. 44-551 and the appeal by claimant must be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Assistant Director David A. Shufelt dated May 22, 1996 remains in full force and effect and the appeal by claimant should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Derek J. Shafer, Topeka, KS
 Bruce Brumley, Topeka, KS
 David A. Shufelt, Assistant Director
 Philip S. Harness, Director